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Federal Communications Commission
Office of Secretary

SUITE 600

1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860

FACSIMILE (202) 293-4827

HOMEPAGE WWW.COHNMARKS.COM

STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.
MARK L. PELESH
J. BRIAN DE BOICE

CHARLES M. OLIVER
EDWARD N. LEAVY

SUSAN V. SACHS
JOHN R. PRZYPYSZNY
A. SHEBA CHACKO
KEVIN M. GOLDBERG**

**MEMBER MARYLAND BAR ONLY

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY B. COHEN

SHARON H. BOB, PH.D.
HIGHER EDUCATION
SPECIALIST ON
POLICY AND REGULATION

DIRECT DIAL: (202) 452-4831
INTERNET ADDRESS:

January 10, 1997

MM 97-122


Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **FM Translator Stations W276AQ, Fort Lee, NJ and W232AL, Pomona, NY
WJUX(FM), Monticello, NY**

Dear Mr. Caton

Submitted herewith on behalf of Universal Broadcasting of New York, Inc. ("Universal") are an original and four copies of a Petition for Extraordinary and Immediate Relief concerning a complaint Universal filed on February 15, 1995 pertaining to the operation of the above-captioned FM translator stations by Gerard A. Turro, in conjunction with FM Broadcast Station WJUX, Monticello, New York, licensed to Mountaintop Broadcasting, Inc.

Very truly yours


Richard A. Helmick

Enclosure

cc w/encl.: Parties on Service List



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Federal Communications Commission
Office of Secretary

BEFORE THE

Federal Communications Commission

UNIVERSAL BROADCASTING OF NEW YORK, INC.,)

Complainant/Petitioner)

V.)

GERARD A. TURRO AND MOUNTAINTOP
BROADCASTING, INC.)

To: The Commission)

MM 97-122

File No. _____

PETITION FOR EXTRAORDINARY AND IMMEDIATE RELIEF

Universal of Broadcasting of New York, Inc. (Universal), permittee of AM Broadcast Station WVNJ, Oakland, New Jersey, respectfully requests that the Commission, pursuant to Section 1.41 of the Commission's Rules, issue an Order directing the Mass Media Bureau ("Bureau") to enforce the Commission's FM translator rules and policies and take prompt action to resolve Universal's long-pending complaint with respect to the operation by Gerard A. Turro ("Turro") of FM Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, in conjunction with primary FM broadcast station WJUX, Monticello, New York, licensed to Monticello Mountaintop Broadcasting, Inc. (MMBI). In support of this request, Universal states as follows:

1. FM translators were authorized in 1970 as a means of providing FM service to areas and populations that were unable to directly receive off-air satisfactory FM signals due either to distance and/or intervening terrain obstructions. In general, an FM translator typically receives the

signal of an FM radio broadcast station (a "primary" station) directly over the air at the translator site and simultaneously retransmits such signal on another frequency to provide "fill-in" service within the primary station's coverage contours or "other area" service outside of the primary station's coverage contour. Because FM translators pose an adverse competitive impact to radio broadcast stations, the Commission has authorized FM translators strictly on a secondary (non-interference) basis only and imposed rules that restrict translator service, ownership, financial support and program origination authority.

2. In MM Docket No. 88-140, the Commission revised and clarified several technical and operational requirements for FM translators. Notice of Inquiry, 3 FCC Rcd 3664 (1988); Report and Order, 5 FCC Rcd 7212 (1990); Memorandum Opinion and Order, 8 FCC Rcd 5093 (1993). Among the amended regulations was 47 CFR § 74.1232(d) which provides that, effective March 1, 1991, the Commission will not grant an authorization for a commercial FM translator under circumstances where the translator's coverage contour extends beyond the protected contour of the commercial primary station and where the translator applicant has "any interest whatsoever or connection with a primary FM station."^{1/}

3. In spite of the clear and unambiguous language of 47 CFR § 74.1232(d) prohibiting any relationship between an FM translator operator and a primary commercial FM station outside of the primary station's protected contour, the Bureau, by letter dated November 19, 1991 (a copy

^{1/} In amending and clarifying its FM translator regulation, the Commission affirmed that the proper role for FM translators was to supplement the service provided by FM radio broadcast stations; the Commission went on to state that the expansion of FM service through the use of translators rather than through full service FM stations "would be inconsistent with our basic FM allotment scheme." Report and Order in MM Docket 88-140, 5 FCC Rcd at 7215.

of which is set forth as Attachment A), issued a declaratory ruling to Turro approving an arrangement by which a translator operator could purchase program time on the primary station provided the translator operator did not receive any financial support or reimbursement for such program time from the primary station.

4. This declaratory ruling was clearly erroneous and inconsistent with the Commission's rules, a fact which the Bureau belatedly acknowledged by letter dated April 5, 1996 (see Attachment G at p. 2) in the form of an equivocal de minimis justification. Thus, as will be discussed below, Universal submits that the Bureau's own misguided action has directly contributed to the economic injury of Universal as well as to the violation of Commission rules and policies by Turro and MMBI; moreover, the Bureau's embarrassment and/or reluctance to own up to its role in this matter has resulted in a deferral of action on Universal's complaint in violation of Universal's due process rights.

5. On February 15, 1995, under a request of confidentiality,^{2/} Universal filed a complaint with the Commission, a copy (without attachments) of which is set forth as Attachment B, detailing a business relationship between Turro and MMBI and providing evidence that Turro was directly originating (and not rebroadcasting) programming over his FM translators and/or indirectly originating such programming as it was principally, if not entirely, directed to areas and populations

^{2/} In spite of Universal's request that its complaint against Turro and MMBI be kept confidential so as to protect its privacy, nevertheless, Turro and MMBI were able to obtain a copy of Universal's complaint. (See Attachment E, p. 2). As a result of this breach of confidentiality by the Bureau, Universal and its employees, to the knowledge of the Bureau, have been subjected to adverse news coverage, telephone and letter writing campaigns, political pressure and even bomb threats.

wholly beyond the service area of primary station WJUX, thereby effecting a de facto reallocation of the WJUX frequency from Monticello, New York, to Fort Lee, New Jersey, in complete contravention of existing Commission rules, policy and case precedents.^{3/}

6. Sometime during May-June 1995, the Commission's New York City field office investigated Universal's complaint against Turro and MMBI. Universal was informally advised by the Bureau's staff that the New York City field office inspection had completely verified and confirmed both the substance and the details of Universal's complaint against Turro and MMBI. Based on the findings of its inspection, the Bureau, on June 21, 1995, addressed detailed inquiries, set forth as Attachments C and D, to, respectively, Turro and MMBI; copies of their responses, both dated July 27, 1995, are set forth, respectively, as Attachments E and F. Universal submits that to the extent that the Commission's own investigation confirmed that both Turro and MMBI were operating in violation of the Commission's Rules and, subsequently, Turro and MMBI were untruthful and lacking in candor in their responses to the Bureau, the basic qualifications of Turro and MMBI to remain Commission licensees are at issue.

7. By letter dated April 5, 1996, a copy which is set forth as Attachment G, the Bureau staff directed Turro, within sixty days of the date of its letter, to sever either his interest in the translator stations or his programming relationship with WJUX and to certify full compliance with 47 CFR § 74.1232 of the Commission's Rules; the Bureau's letter is silent as to the basic character

^{3/} Turro was quoted in the Bergen Record of July 30, 1995 as stating that FM Translator W276AQ, Fort Lee, New Jersey, d/b/a Jukebox Radio, since going on the air in March 1993, had grossed about \$1 million annually and draws more than 90,000 listeners in an average quarter hour, mostly from Bergen, the nation's 13th richest county in per capita income. Revenue is derived by selling commercials, mostly to Bergen advertisers.

qualification issues raised by Universal against Turro and MMBI as well as the per se illegality of Turro's translator operations in that those translators are directly or indirectly originating, not rebroadcasting, programming.

8. In failing to address the fitness of Turro and MMBI to continue to be broadcast licensees as well as the per se illegality of the programming relationship between Turro's translators and WJUX, the Bureau's letter of April 5, 1996 is misguided; this is so because the Bureau cannot permit Turro to divest his ownership of the translators without first finding that he is qualified to be a Commission licensee. See, e.g., Stockholders of CBS, Inc., 1 CR 772 (1995); FM Broadcasters of Douglas County, 10 FCC Rcd 10429, 1 CR 772 (1995). Moreover, irrespective of Turro's character qualifications, the artifice constructed by Turro and MMBI is such a fundamental perversion of Commission rules and policy that there is no possible method by which it can be brought into compliance and for the Bureau's letter to imply otherwise is simply incredible.

9. Moreover, the Bureau's April 5, 1996 letter has only served to prolong the illegal operations of Turro and MMBI to the financial detriment of Universal (WVNJ and W276AQ both provide service to Bergen County) and, by so doing, violates the due process rights of Universal. In this regard, on August 13, 1996, the Bureau issued a decision, a copy of which is set forth as Attachment H, that a proposal of Turro to assign his translator licenses to the Gerard A. Turro Trust, which would be wholly funded by Turro who would also be the beneficiary of such Trust, did not

comply with its April 5, 1996 directive to cease the relationship between the translators and WJUX; however, Turro continues to operate such translators, in conjunction with WJUX, as of this date.^{4/}

10. Universal's complaint has been on file with the Bureau for almost two years. For at least eighteen months, the Bureau, through its own independent investigation, has been aware that Turro and MMBI are engaged in operations which (a) violate Commission rules and policies, (b) involve misrepresentation and lack of candor before the Commission and (c) are adversely affecting Universal's operation of WVNJ. The Bureau's inability to effectively deal with the issues raised in Universal's complaint and to enforce the Commission's rules and policies, regrettably, requires Universal to seek the intervention of the Commission to compel the Bureau to resolve those issues forthwith^{5/}, especially since the Bureau has (a) reason to avoid ruling on those issues so as to not call attention to its own inadvertent complicity in Turro and MMBI's scheme and (b) been subjected to intense political (see, for example, a letter dated June 18, 1996, a copy of which is set forth as Attachment I, to Roy Stewart from Marge Roukema (R NJ 5th Dist.), Sue W. Kelly (R NY 19th Dist.), Robert G. Torricelli (D NY 9th Dist.), Benjamin A. Gilman (R NY 20th Dist.) and Maurice D. Hinchey (D NY 26th Dist.)) and public pressure (e.g., a telephone and letter writing campaign).

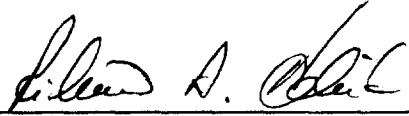
^{4/} On September 12, 1996, Turro filed an application to assign the licenses of FM Translators W276AQ and W232AL to Press Broadcasting Company, Inc.; that application has never been accepted for filing and put on public notice, but, nonetheless, Universal has petitioned to deny such application.

^{5/} If the Bureau does not take action to resolve Universal's complaint on or before January 27, 1997, Universal will petition the United States Court of Appeals for the District of Columbia Circuit for a writ of mandamus.

all orchestrated by Turro, to permit the patently illegal operations of Turro and MMBI to continue over the objections of and financial injury to Universal.

Respectfully submitted

UNIVERSAL BROADCASTING OF NEW YORK, INC.

By: 
Richard A. Helmick

COHN AND MARKS
1333 New Hampshire Avenue, N.W., Suite 600
Washington, D.C. 20036
(202) 293-3860

January 10, 1996

ATTACHMENT A

7310

FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Nov 19 4 49 PM '91 19 NOV 1991

2. n k copy

IN REPLY REFER TO:

8930-AJS

Rainer K. Kraus, Esquire
Koteen & Naftalin
1150 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. Kraus:

This refers to your correspondence of January 31, 1991, and the accompanying January 30, 1991 letter of Gerard Turro, licensee of FM translator station W276AQ, Fort Lee, New Jersey. Mr. Turro requests the Commission to provide an informal declaratory ruling regarding the proposed operation of an FM translator station. In particular, Mr. Turro seeks guidance on whether a licensee of a commercial FM translator station can purchase broadcast airtime on the station it is rebroadcasting ("primary station"). The purchase would be under the following circumstances:

1. The translator would be operating outside of the primary contour of the station being rebroadcast;
2. Pursuant to the Commission's Rules, the primary station would not reimburse the translator station licensee for airtime purchased (the primary station would not provide any financial support to the licensee of the translator);
3. The translator station licensee would purchase the airtime through a time brokerage agreement and would meet the Commission's rules and policies on such agreements; and
4. The translator would solicit advertisements to be aired during the brokered time to support the programming presented.

Specifically, the issue presented by Mr. Turro's request is whether the licensee of a translator station is permitted to enter into a time brokerage contractual arrangement with its primary station, provided that the primary station does not either reimburse the translator station licensee for the purchase of the brokered time or provide financial support for the translator station's operation.

In order to rule on Mr. Turro's request we must first determine the effect such a request would have on our newly revised FM translator rules governing financial support by commercial primary stations (47 C.F.R. § 74.1232

Rainer K. Kraus, Esquire

2.

(1990)).¹ Additionally, because airtime for the programming will be purchased through a time brokerage contractual arrangement, we must also give attention to the Commission's Policy Statement on Part-Time Programming, 82 FCC 2d 107 (1980).²

Under § 74.1232(e), an FM translator station whose coverage contour extends beyond the protected contour of the primary station cannot receive any support, before or after construction, either directly or indirectly, from the primary station. This applies to all persons and entities having any interest or connection with the primary station.

With regard to brokerage arrangements between licensees and brokers, such arrangements usually involve the broker as both program producer and commercial salesperson for a time block purchased from the licensee. Our rules only require licensees to keep brokerage contracts at the station and make them available for Commission inspection upon request (47 C.F.R. § 73.3613(d) (1989)).

In view of the specific circumstances presented by Mr. Turro's request, we conclude that his proposed operation would be consistent with the Commission's rules and policies as outlined above. However, this conclusion rests on the following requirements: the time brokerage contract must be kept at the primary station and made available for Commission inspection upon request per § 73.3613(d); there must be a bona fide, arms-length transaction between the primary station and the translator; the licensee of the translator station will have to pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community; and at no time would the translator station receive financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station.

Accordingly, to the extent indicated above, and in view of the specific circumstances presented, we do not find that Mr. Turro's proposal would be prohibited by the Commission's rules or policies.

Sincerely,

AS
AJSchneider/RDurham:cj/asb/asd/mbb
typed: 11-15-91
WEC

Roy J. Stewart
Roy J. Stewart, Chief
Mass Media Bureau

¹ See Report and Order In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, MM Docket No. 88-140, 5 FCC Rcd. 2106 (1990).

ATTACHMENT B

LAW OFFICES

COHN AND MARKS

STANLEY S. NEUSTADT
RICHARD M. SCHMIDT, JR.
JOEL H. LEVY
ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
WAYNE COY, JR.

MARK L. PELESH
J. BRIAN DE BOICE
ALLAN ROBERT ADLER
CHARLES M. OLIVER

SUSAN V. SACHS
JOHN R. PRZYPYSZNY
WILLIAM B. WILHELM, JR.

OF COUNSEL
MARCUS COHN
LEONARD H. MARKS
STANLEY B. COHEN

SUITE 600
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860
TELECOPIER (202) 293-4827

DIRECT DIAL: (202) 452-4831

February 15, 1995

VIA HAND DELIVERY

Mr. Norman Goldstein, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8210
Washington, D.C. 20554

Dear Mr. Goldstein

On behalf of Universal Broadcasting of New York, Inc., licensee of AM Broadcast Station WVNJ, Oakland, New Jersey ("Complainant"), the Commission is hereby requested, pursuant to Sections 1.80, 1.89 and 1.91 of the Commission's Rules, to (a) investigate ongoing and blatant violations of the FM translator rules by Gerard A. Turro ("Turro"), licensee of FM Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and Aural Intercity Relay Station WMG499, Dumont, New Jersey, and Wesley R. Weis ("Weis"), President, Director and 100% owner of Monticello Mountain Top Broadcasting, Inc., licensee of FM Broadcast Station WXTM, Monticello, New York, and licensee of FM Translator Station W244AS, Oakhurst, New Jersey, (b) impose forfeiture penalties against Turro and Weis and (c) issue an order directing Turro and Weis to show cause why an order of revocation and a cease and desist order should not be issued. In support thereof, the following is set forth.

Complainant/Standing. Complainant requests that its identity be kept confidential by the Commission as Turro and Weis can be expected to mount political pressure and public opinion against any threat to their current operations. Complainant began operating Station WVNJ on December 13, 1993 to provide local broadcast service to Oakland and the surrounding areas of

Mr. Norman Goldstein, Chief
February 15, 1995
Page 2

Bergen County, New Jersey.^{1/} WVNJ is the only transmission facility authorized at Oakland, New Jersey and is one of only two commercial broadcast stations licensed in Bergen County, New Jersey.^{2/} As a new station trying to establish itself and provide local service to its community of license and its surrounding service area, WVNJ is severely and adversely impacted by the illegal operations of Turro and Weis which will be detailed below.

Relationship Between Turro and Weis. Turro and Weis were co-owners of FM Translator Station W232AL, Pomona, New York. On October 18, 1994, however, Turro and Weis filed an application (File No. BALFT-941019TC) to assign the license of W232AL solely to Turro; that assignment of license was in consideration of Turro assigning the license of FM Translator Station W244AS, Oakhurst, New Jersey, to Weis (File No. BALFT-941019TD). Presumably, these transactions were made to divest Weis from involvement with FM Translator W232AL, in order to comply with Section 74.1232(e) of the rules, as that translator would be used to rebroadcast the signal of WXTM which was being acquired by Weis.^{3/}

By letter dated November 30, 1994, Turro's engineering firm, Carl T. Jones Corporation, notified the Commission that FM Translator Station W276AQ, Fort Lee, New Jersey, licensed to Turro, was rebroadcasting the signal of Station WXTM, Monticello, New York (see Attachment 2). Although WXTM is a Class A FM facility located approximately 100 km (62 miles) north of the W276AQ transmitter site, no explanation was given as to how the signal of WXTM would be received by W276AQ. Complainant has determined that Turro is providing all or substantially all of the programming being broadcast by WXTM; such programming is being originated by Turro

^{1/} WVNJ is authorized unlimited time operation on 1160 kHz with a power of 2.5 kW nighttime and 10 kW daytime, using a three tower directional antenna system at nighttime and a four tower directional antenna system for its daytime operation; an application (File No. BMP-940819AB) is pending to increase the daytime power of WVNJ to 20 kW using the existing four tower daytime directional antenna system.

^{2/} The other station licensed in Bergen County, New Jersey is WWDJ(AM), Hackensack, New Jersey.

^{3/} WXTM was an unbuilt station when Weis acquired it on October 18, 1994 pursuant to Commission authority granted in Application File No. BAPH-940725GR. Station WXTM was placed in operation pursuant to automatic program test authority on or about October 31, 1994 when an application for license (File No. BLH-941031KD) was filed.

Mr. Norman Goldstein, Chief
February 15, 1995
Page 3

from a studio located at 75 Second Street, Dumont, New Jersey, and transmitted to WXTM by broadcast conditioned telephone lines. Turro's Dumont, New Jersey studio is also listed as a remote control point for WXTM (see page 6 of Attachment 1) and when Howard Warshaw, the Complainant's Vice President, Secretary, Director and 50% owner, called WXTM in Monticello, New York, the call was routed to Turro's Dumont, New Jersey studio and answered by Turro (see statement under penalty of perjury of Howard Warshaw at Attachment 3).

Description of Illegal Operations. FM Translator Station W276AQ, 103.1 MHZ, operates with an effective radiated power of 35 watts and an antenna radiation center above average terrain of 140 meters from a transmission site in Fort Lee, New Jersey. Prior to November 1994, W276AQ rebroadcast the signal of noncommercial educational FM Broadcast Station WJUX, Franklin Lakes, New Jersey; WJUX is licensed to Bergen County Community Broadcast Foundation ("BCCBF"). The principals of BCCBF, a not-for-profit corporation, are Turro and his wife and BCCBF's business address is listed as 687 Orchard Street, Oradell, New Jersey, the residence address of Turro. WJUX (formerly WRRH) operates on 88.7 MHZ and was acquired by BCCBF from Ramapo-Indian Hills Regional High School District Board of Education in late 1982 for a purchase price of \$100,000, with \$15,000 down and the balance of \$85,000 to be paid over a ten year period, such balance to be personally guaranteed by Turro in the form of a second mortgage on his residence (see Agreement dated September 21, 1992 and set forth as Attachment 4).

On October 25, 1994, WJUX suspended broadcast operations for the stated reason of alleviating interference caused to and received from co-channel Station WPAC-FM, Wayne, New Jersey; the Commission was notified of such suspension of operations by letter dated November 22, 1994 and authority to remain silent was granted by Commission letter dated December 9, 1994 (see Attachment 5). As noted above, substantially concurrent with the suspension of broadcast operations on WJUX, WXTM began broadcast operations and shortly thereafter the Commission was notified that W276AQ had changed its primary station from WJUX to WXTM.

Set forth as Attachment 6 is an Engineering Report of Cohen, Dippell and Everist which establishes through measurement data that W276AQ is originating, not rebroadcasting, 100% of its program transmissions in violation of Section 74.1231(g) of the Commission's Rules which limits program origination by FM translator stations to no more than 30 seconds per hour. The programming originated on W276AQ is transmitted to the translator station from Turro's Dumont, New Jersey studios via Intercity Relay Station WMG-499 which is a violation of Section 74.1231(b) of the Rules which restricts the use of FM translators for the purposes of rebroadcasting the signals of a primary FM radio station or another translator station which have been received "directly

Mr. Norman Goldstein, Chief

February 15, 1995

Page 4

through space."^{4/} In an effort to camouflage this blatantly illegal operation of W276AQ, Turro is apparently simultaneously transmitting the W276AQ programming to WXTM by broadcast conditioned telephone line; however, it is clear from the Engineering Report that the high quality signal being originated by W276AQ rules out any possibility that the signal of WXTM is being rebroadcast either through direct off-air reception of that station or by relay of the WXTM signal by Translator Station W232AL, Pomona, New York.^{5/}

Turro is doing business as "Juke Box Radio" which is referred to as "your hometown radio station" in promotional material distributed by Turro (see Attachment 6). Set forth as Attachment 7 is a transcript, commissioned by the Complainant, of the commercial and promotional programming broadcast by FM Translator W276AQ from 11:15 a.m. on January 5, 1995 through 11:20 a.m. on January 7, 1995. It will be observed that almost all the commercial programming originated by W276AQ is directed to Bergen County, New Jersey, which is not even within the service area of WXTM. Indeed, Turro's own marketing material (see Attachment 6) refers to WXTM as an "affiliate" of Juke Box Radio - 103.1 FM (the frequency of FM Translator Station W276AQ). In other words, by Turro's own admission, he is operating W276AQ as if it were a primary originating FM broadcast station. WXTM is nothing more than a diversion or camouflage for Turro's blatantly illegal program origination over W276AQ; nevertheless, WXTM is actively participating in this scheme to violate the Commission's Rules and, accordingly, both Turro and Weis' qualifications to continue to be licensees of the Commission are at issue.

This scheme of Turro and Weis to evade and violate the Commission's Rules was not undertaken lightly but, rather, is the product of deliberate action over time. As the facilities of WJUX could not be improved without causing interference to other broadcast stations, Turro either directly or indirectly has attempted to persuade the Commission to permit W276AQ to increase its facilities to either 110 watts nondirectional or 1000 watts directional so that "Juke Box Radio" would have the ability to reach all areas of Bergen County with a strong, clear signal. Turro also lobbied for a waiver of the Commission's Rules to permit W276AQ to originate local programming, thereby avoiding the cumbersome process of originating programming through WJUX in Franklin Lakes.

^{4/} W276AQ is well outside the protected 1.0 mV/m contour of WXTM and does not operate on a reserved channel which would allow it to receive its signal input by means other than off-air reception.

^{5/} Cohen, Dippell and Everist are of the opinion that W232AL is either retransmitting the signal of W276AQ or it too is receiving a direct program feed from Turro's Dumont, New Jersey studio.


Mr. Norman Goldstein, Chief
February 15, 1995
Page 5

New Jersey for rebroadcast by W276AQ, with the inherent technical, programming and non-profit constraints which were imposed by such operation.^{9/}

In anticipation that efforts to improve the signal strength of W276AQ and to obtain a waiver of the original requirements would meet with failure, Turro, as early as January 1991, laid out for the Commission the basic structure of his scheme to evade and violate the Commission's Rules in a request for declaratory ruling to which the Commission responded by letter dated November 19, 1991 (see Attachment 9). Turro's request for declaratory ruling, however, was short on detail and was misleading in describing the relationship between the primary station and the translator as, in this case, the primary station is not financially supporting the translator station but, rather, the translator station is supporting the primary station, as the commercial time is being sold by Turro to businesses operating wholly outside the service of the primary station. This is a classic case of the tail wagging the dog or, more precisely, Turro making a mockery of the Commission's Rules which require that FM translator stations operate as a secondary rebroadcast service and not as a primary originating service.

Conclusion. For the reasons set forth above, the Commission is respectfully requested to expeditiously investigate this complaint, confirm the facts set forth herein, impose forfeitures and penalties against Turro and Weis and issue an order directing Turro and Weis to show cause why an order of revocation and a cease and desist order should not be issued.

Respectfully submitted



Roy R. Russo
Richard A. Helmick

Enclosures

cc: Alan J. Schneider, FCC, Room 408
(w/enclosures)

^{9/} Set forth at Attachment 8, for example is a copy of the Commission's letter of February 10, 1994 to Congresswoman Marge Roukema which addresses the request of a constituent advocating a power increase and waiver of the program origination requirements of W276AQ.

ATTACHMENT C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 21 1995

IN REPLY REFER TO:
1800C1-SB/RW
95020241

Mr. Gerard A. Turro, Licensee
Station W276AQ (FM), Fort Lee, NJ
687 Orchard Street
Oradell, NJ 07649

Dear Licensee:

The Commission recently received information that raises serious questions concerning the operation of Translator Stations W276AQ, Ft. Lee, NJ, W232AL, Pomona, NY and Aural Inter City Relay Station WMG-499, Dumont, NJ. Specifically, this information alleges that Mr. Gerard A. Turro, licensee of Stations W276AQ, W232AL and WMG-499, is originating all of the programming transmitted by these translator stations from a studio located at 75 Second Street, Dumont, NJ. The origination of programming by a translator station is a violation of Section 74.1231(b) and Section 74.531(c) of the Commission's Rules. Our information also suggests that Mr. Turro is simultaneously delivering this programming to Station WJUX (FM), Monticello, NY.¹ In addition, we are investigating whether Mr. Turro has engaged in an unauthorized assumption of control of Station WJUX (FM), Monticello, NY, licensed to Monticello Mountaintop Broadcasting, Inc., in violation of Section 310 (d) of the Communications Act of 1934, as amended, and Sections 73.3540 and 74.14 of the Commission's Rules.

47 C. F. R. § 74.1231 (b), (e), (f), and (g) state, in pertinent part, that:

- (b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified.
- (e) An FM translator shall not deliberately retransmit the signals of any station other than the station it is authorized to retransmit. Precautions shall be taken to avoid unintentional retransmissions of such other signals.

¹We note that WJUX (FM) changed call signs on April 14, 1995. Prior to this date the call sign was WXTM (FM). The call sign WJUX (FM) was previously assigned to Station WNJW (FM), Franklin Lakes, NJ, which is licensed to the Bergen County Community Broadcasting Foundation, with Mr. Turro serving as principal owner. Station WNJW (FM) is currently silent. Any reference to WJUX throughout this letter refers to the Monticello, NY, station.

- (f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements.
- (g) The aural material transmitted as permitted in paragraph (f) of this section shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of thirty (30) seconds an hour. . . . Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

47 C. F. R. § 74.531 (c) states:

- (c) An aural broadcast intercity relay station is authorized to transmit aural program material between FM radio stations and FM translator stations operating within the coverage contour of their primary stations.

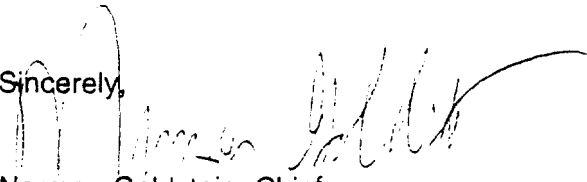
The Commission has made no determination in this matter. In order that we may be more fully informed, please provide answers to the following:

1. List the call sign, frequency, and community of license of the primary FM broadcast station(s) that is retransmitted by Stations W276AQ and/or W232AL.
2. Provide copies of any written communications that have granted permission to the licensee of Stations W276AQ and/or W232AL to rebroadcast such transmissions. These should include, but are not limited to, memoranda, correspondence, and programming contracts.
3. Since October 18, 1994, has Mr. Gerard A. Turro provided any programming for Stations W276AQ and/or W232AL from his studio location at 75 Second Street, Dumont, NJ? If so, provide a description of the programming and the dates, times and duration of all broadcasts.
4. At any time from October 18, 1994, to the present has the programming originated at the Dumont, NJ. studio been transmitted to Stations W276AQ and/or W232AL by aural intercity relay station WMG-499? If so, state the dates, times, and duration of all such transmissions.
5. Has Mr. Turro implemented the use of telephone lines now or at any time from October 18, 1994, to deliver programming to Stations W276AQ, W232AL or WJUX ? If so, state the dates, times, and duration of all such programming that has been conveyed by this method to each of the referenced stations.
6. State whether Mr. Gerard Turro has entered into a management agreement , a time brokerage agreement, or any other agreement concerning ownership, programming, staffing, sales, or operation of Station WJUX (FM). If the answer is in the affirmative, provide signed and dated copies of such agreements.

7. With respect to Station WJUX (FM), describe in detail any involvement that Gerard A. Turro, or any individual employed by Mr. Turro or by other businesses in which Mr. Turro has an ownership interest, has had in the following aspects of the construction or operation of Station WJUX (FM):
- (a) paid the cost of constructing or outfitting the studio or transmitting facilities of Station WJUX (FM)
 - (b) guaranteed repayment of funds borrowed by the licensee of Station WJUX (FM) for the purchase of equipment or construction of the Station. If so, provide details regarding such loans or guarantee arrangements.
 - (c) controlled and had access to the WJUX's financial records and books;
 - (d) prepared and kept WJUX's financial records;
 - (e) paid WJUX's operating expenses;
 - (f) prepared and signed WJUX's checks;
 - (g) paid rent for WJUX's studio(s);
 - (h) paid rent for WJUX's antenna tower site or usage;
 - (i) interviewed, hired, or fired WJUX personnel;
 - (j) controlled what is or is not broadcast on WJUX;
 - (k) established or changed WJUX management;
 - (l) controlled and had access to WJUX's bank accounts; and
 - (m) prepared and paid WJUX's payroll, insurance, income and property taxes, withholding statements and social security obligations.

You are requested to provide, within thirty (30) days of the date of this letter, all relevant information or documentation that is responsive to the foregoing or that you feel may be useful in helping the Commission make a determination in this matter. Failure to answer fully will constitute a violation under Section 73.1015 and may subject you to serious sanctions. Commission policy requires that responses to its inquiries be signed by an officer or director of the licensee organization.

Sincerely,


Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau

ATTACHMENT D

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 21 1995

IN REPLY REFER TO:
1800C1-SB/RW
95020241

Monticello Mountaintop Broadcasting, Inc.
Licensee, Station WJUX (FM), Monticello, NY
11 Old Tappan Road
Old Tappan, NJ 07675

Attn: Mr. Wesley R. Weis

Dear Licensee:

The Commission has received information raising questions concerning the ownership of Station WJUX (FM), Monticello, NY.¹ Specifically, it is alleged that the ownership and control of Station WJUX changed without prior authorization of the Commission, which may be a violation of Section 310 (d) of the Communications Act of 1934, as amended, and Sections 73.3540 and 74.14 of the Commission's Rules. It appears further that Station WJUX has: (1) violated Section 73.1125(a) of the Commission's Rules by failing to maintain a main studio within the station's principal community contour; (2) violated Section 73.1125 (c) of the Commission's Rules by failing to maintain a local or toll-free number for residents of Monticello, NY; and (3) violated Section 73.3526 (d) of the Commission's Rules by failing to maintain a public inspection file in the station's community of license.

The Commission has made no determination in this matter. So that we may be more fully informed, pursuant to Section 73.1015 of the Commission's Rules, please respond to the following questions.

1. According to our records, Monticello Mountaintop Broadcasting, Inc., has been the licensee of Station WJUX (FM) since October 14, 1994, and there has been no reported change in ownership since that time. If there has been a change in ownership or control of Station WJUX (FM), indicate whether you filed any applications for Commission authorization of the transfer and, if not, explain why not. If you filed such an application, please provide us with a stamped copy or some other evidence of the filing.
2. Has Mr. Gerard A. Turro, licensee of Station W276AQ, Ft. Lee, NJ, ever been the licensee of Station WJUX (FM) or otherwise held an ownership interest in the licensee of the station? If Mr. Turro is the licensee or has obtained such an ownership interest, state when the acquisition occurred and whether he continues to hold the license or such an ownership interest.

¹We note that WJUX (FM) changed call signs on April 14, 1995. Prior to this date the call sign was WXTM (FM). The call sign WJUX (FM) was previously assigned to Station WNJW (FM), Franklin Lakes, NJ, which is licensed to the Bergen County Community Broadcasting Foundation. Any reference to WJUX (FM) throughout this letter refers to the Monticello, NY, station.

3. State who has provided any funds used to purchase equipment for and/or construct Station WJUX (FM). If such funds have been provided by any person or entity other than the licensee of Station WJUX (FM), or by any person or entity which has not previously been reported to the Commission as having an ownership interest in the licensee, identify all such persons or entities and state the specific amounts contributed by such other persons or entities and the specific equipment and/or construction expenses paid for with such contributions.

4. State whether any person or entity which has not previously been reported to the Commission as having an ownership interest in the licensee (a) has lent to the licensee funds used to purchase equipment or construct Station WJUX (FM), or (b) has guaranteed repayment of funds borrowed by the licensee for the purchase of equipment or construction of the Station. If so, provide details regarding such loans or guarantee arrangements.

5. For the period of time from October 18, 1994, to the present, identify by name, title, service dates, and employer,² the specific person or persons who participated in the following activities with respect to Station WJUX (FM):

- (a) controlled and had access to the Station's financial records and books;
- (b) prepared and kept the Station's financial records;
- (c) paid the Station's operating expenses;
- (d) prepared and signed the Station's checks;
- (e) paid rent for the studio;
- (f) paid rent for the antenna tower site or usage;
- (g) interviewed, hired, or fired Station personnel;
- (h) controlled what is or is not broadcast;
- (i) established or changed Station management;
- (j) controlled and had access to the Station's bank accounts; and
- (k) prepared and paid the Station's payroll, insurance, income and property taxes, withholding statements and social security obligations.

6. With respect to each person listed in response to subsections (a) through (k), state whether, at any time from the initiation of program test broadcasting to the present, such person was, during the same period that he/she was employed by Station WJUX, also employed by any other business. If so, state the name of the other business, location, the individual's responsibilities there, and the hours per week employed at the business while working also at WJUX.

Main Studio

7. Provide the following information with regard to the main studio of WJUX (FM):

- (a) State whether WJUX (FM) has a main studio. If so, provide the exact address of the main studio at all times since the main studio was first established;

²By the use of the term employer in this and subsequent questions, we seek identification of the entity which employed and paid the salary of the identified individuals.

- (b) State the date (month and year) the main studio was established in each location listed in subsection (a);
 - (c) Provide contour maps showing the station's principal community contour, and pinpointing each location of the main studio listed in subsection (a) in relation to the station's principal community contour;
 - (d) State the reason for any change of location of WJUX (FM)'s main studio since the main studio was first established;
 - (e) State whether WJUX (FM) has ever been granted consent by the Commission to locate the station's main studio outside the principal community contour. If so, provide a dated copy of such Commission consent.
8. Provide copies of any internal corporate communications, news releases, and promotional materials concerning any main studio relocation occurring since the main studio was first established.
9. With regard to the functions performed at the main studio since the main studio was first established, provide the following information:
- (a) State the precise functions performed at the main studio;
 - (b) State whether the main studio has program origination capability (including any linkage from the studio to the transmitter), and, if so, describe in detail its technical facilities;
 - (c) Provide names, titles, employer, and responsibilities of personnel assigned to the main studio;
 - (d) State which of the personnel listed in response to subsection (c) are present at the main studio during regular business hours.
 - (e) With respect to each person listed in response to subsection (c), state whether, at any time from the initiation of program test authority to the present, such person was, during the same period that he/she was employed by Station WJUX, also employed by any other business. If so, state the name of the other business, location, the individual's responsibilities there, the hours per week employed at the business while working also at WJUX.
10. State the days and times during which the main studio has been open to the public since the main studio was first established, and when these hours were established.
11. Provide dated and executed copies of leases and insurance policies for each location of the main studio used since the main studio was first established.
12. If WJUX (FM) maintains an auxiliary studio, state;